

REMARKS

Claims 1 through 33 were presented for examination and were pending in this application. In an Office Action dated February 27, 2004, claims 1 through 33 were rejected. Applicant thanks Examiner for examination of the claims pending in this application and addresses Examiner's comments below.

Applicant herein amends claims 9 and 23. No claims are deleted or added. These changes are believed not to introduce new matter, and their entry is respectfully requested. The claims have been amended to expedite the prosecution of the application in a manner consistent with the Patent Office Business Goals, 65 Fed. Reg. 54603 (Sept. 8, 2000). In making this amendment, Applicant has not and does not narrow the scope of the protection to which Applicant considers the claimed invention to be entitled and does not concede that the subject matter of such claims was in fact disclosed or taught by the cited prior art. Rather, Applicant reserves the right to pursue such protection at a later point in time and merely seeks to pursue protection for the subject matter presented in this submission.

Based on the above Amendment and Remarks herein, Applicant respectfully requests that Examiner reconsider all outstanding objections and rejections, and withdraw them.

Objection to the Drawings

The Examiner has objected to Figures 1 through 4A (previous drawing sheets 1 through 5), stating that they have handwriting labels. Applicant now substitutes new Figures 1 through 4A (new drawing sheets 1 through 5), with typeface labels. No new matter is added with this substitution.

A copy of the substitute drawings is also submitted to the Chief Draftsperson for approval. Applicant respectfully requests Examiner also explicitly indicate approval of the substitute drawings in the next official communication.

Response to Rejection Under 35 USC § 112, Paragraph 2

In the 2nd paragraph of the Office Action, Examiner has rejected claims 9 and 10 as allegedly not specifically pointing out and distinctly claiming the subject matter that the Applicants regard as the invention.

Examiner assumes that the term “sequence number” is with reference to claim 2. Examiner’s assumption is correct. Applicant have amended claim 9 to now depend from claim 2. As claim 10 depends from claim 9, Applicant respectfully submits that the basis for the rejection to these claims is now obviated. Applicant requests reconsideration as well as removal of the basis of the rejection to these claims.

Response to Rejection Under 35 USC 102(e)

In the 4th through 18th paragraph of the Office Action, Examiner rejects claims 1, 2, 6 through 14, 16 through 19, and 23 through 31 under 35 USC § 102(e) as allegedly being anticipated by U.S. Patent No. 6,651,099 to Dietz et al. (“Dietz”). This rejection is now traversed.

Claim 1 recites, *inter alia*, a “method for providing a unique identification of monitored network data instances flowing across various connections between networked devices, the unique identification being derived from information contained entirely within each instance of the network data,” where the method comprises:

using at least one monitoring device to monitor a network data instance flowing across at least one data connection;

deriving from the data instance certain information which collectively provides a unique identification of the network data instance;
assembling the derived information into an input string for a hash function; and
using the output string of the hash function as a signature which represents a unique identifier of the network data instance.

The claimed invention beneficially provides unique identification of a network data instance.

This unique identification of a network data instance can go down to the level of a particular data packet. Hence, in a network flow there may be multiple unique identifications, each one for a network data instance. This beneficially allows for tracking specific data instances between devices in a network, allowing for greater statistical accountability in a networked environment and also may be used to reduce or eliminate duplicative data along the network.

The cited reference, Dietz, does not disclose the claimed invention. Dietz discloses a method for providing an identification of monitored network data that is not unique to each individual datum, or a network data instance. (See Dietz, Abstract,). Dietz does disclose use of an identification for associating successively-received packets that are part of the same “flow.” (*Id.*, Abstract; col. 5, lines 25-34; col. 12, lines 6-11). However, this identification is conventional and not unique for data packets in the flow. Dietz discloses “extracting and information identifying (EII) engine that extracts selected parts of the packet, including identifying information from the packet as required for recognizing this packet as part of a flow.” (col. 13, lines 18-20 (emphasis added)). Thus, for this packet to be recognizable by the flow its identifier as Dietz discloses, it cannot be unique as is recited in Applicant’s claimed invention.

Assuming, *arguendo*, that the identification in Dietz were truly unique. In that case, the identifier in Dietz would be different for each of packet in the flow. However, this would

render the system in Dietz useless for grouping the packets into a flow, and render the disclosed system moot. Dietz clearly fails to disclose Applicant's claimed invention.

Where Dietz does refer to the identification as "unique," it is only in the context of an entire flow, for example, at col. 13, lines 28-29, where it discloses "the signature is used to recognize further packets that are or may be part of this flow." Unlike Dietz, the "unique identification" recited in claim 1 is unique down to the specific network data instance, which may be a single packet. Therefore, the claimed invention can provide a unique identification for each of the many packets composing a flow.

Thus, Applicant submits that claim 1 is patentably distinguishable over the cited reference. Likewise, claims 16 and 17, which depend directly from claim 1, recite additional patentable features of the claimed invention. Hence, the arguments made above also apply to these claims. Applicant respectfully requests reconsideration and withdrawal of the rejection to claim 1, as well as claims 16 and 17, and request allowance of these claims.

With respect to claims 2 (and 6 through 8), the claimed invention further recites steps for deriving from the data instance certain information that collectively provides a "unique identification of the network data instance." As already noted at length, Dietz does not disclose a unique identification of the network data instance as Applicant claims. Nor does Dietz disclose any derivation as Applicant claims.

The citation by Examiner to col. 13, lines 30-33 in Dietz, merely references conventional hash output strings as the output of their computation to determine keys that allow packets in the flow to be linked together, *i.e.*, so that identifiers cannot be unique for the packet so as not to render the system useless. In contrast to Dietz, Applicants claimed "sequence number," as recited in claims 2 (and 6 through 8), is a completely different

because each network data instance may have a unique identification. Thus, Applicant submits that claims 2 through 8 are also patentably distinguishable over the cited reference. Applicant respectfully requests reconsideration and withdrawal of the rejection to claims 1 through 8, as well as allowance of these claims.

With respect to claims 9 through 12, as noted above, the claimed sequence numbers are not disclosed in Dietz. The claimed sequence number is not equivalent to or directly related to the source and/or destination port numbers or protocol types. Examiner's attempt to correlate these features in Dietz to the claimed invention is misplaced. Rather, the sequence number serves a completely different purpose in the TCP/IP network protocols, for example, use in providing a unique identification. Further, the port numbers or protocol types disclosed in Dietz are constant for all packets in a particular flow. In contrast, the sequence number of the claimed invention is different for each packet. Therefore, Applicant submits that claims 9 through 12 are also patentably distinguishable over the cited reference. Applicant respectfully requests reconsideration and withdrawal of the rejection to claims 9 through 12, as well as allowance of these claims.

With respect to claims 13 and 14, these claims recite truncating and adding, respectively, to the hash function output string. However, Applicant notes that this hash function output string is resultant from the claimed steps of deriving and assembling involving the unique identifier for the network instance as claimed in claim 1. In this context Dietz fails to disclose these particular optimizations. Rather, the citations to col. 17, lines 7-19 in Dietz merely reference superficially similar terminology that describes aspects of data processing in Dietz's system that are fundamentally different than the claimed invention. Thus, Applicant submits that claims 13 and 14 are also patentably distinguishable over the

cited reference. Applicant respectfully requests reconsideration and withdrawal of the rejection to claims 13 and 14, as well as allowance of these claims.

Applicant submits that the reasons set forth above with respect to claim 1, also apply to claims 18, 19, and 23 through 31, and the arguments made therein are incorporated by reference. Hence, Applicant respectfully submits that claims 18, 19, and 23 through 31 are also patentably distinguishable over the cited reference. Applicant respectfully requests reconsideration and withdrawal of the rejection, as well as allowance of these claims.

Response to Rejection Under 35 USC 103(a) in View of Dietz

In the 21st through 25th paragraphs of the Office Action, Examiner rejects claims 3-5, 15, 20-22, 32, and 33 under 35 USC § 103(a) as allegedly being unpatentable over U.S. Patent No. 6,651,099 to Dietz et al. ("Dietz"). This rejection is respectfully traversed.

Examiner cites only Dietz as the basis for his obviousness rejection and then relies upon a conclusory statement that the claimed features "would have been obvious to one of ordinary skill in the art at the time the invention was made." However, as is well understood, in order to support a rejection under 35 USC § 103 the Examiner must provide "some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references." (*In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988); *See also, In re Lee*, 277 F.3d 1338 (Fed. Cir. 2002)). Here, the Examiner has not cited an objective prior art reference that provides an incentive, motivation, or suggestion for making the suggested combination. Also, Examiner has not established by objective evidence that knowledge generally available to one of ordinary skill in the art would lead one to make the suggested combination. Thus, Applicant respectfully asserts that the suggested combination is improper.

Moreover, the combination suggested by Examiner is improper as it would change the principles of operation of Dietz. For example, with respect to claims 3, 4, 20, and 21, the signatures being transmitted is different from Dietz because the claimed invention recites having a unique identifier applicable to the level of individual packets whereas signature in Dietz must be constant for all packets composing a specific flow as described above. Therefore, the result of transmitting these signatures to a central collector is also different.

In addition, the signatures as recited in the claimed invention beneficially apply even after transmission to a centralized collector where they can be compared to signatures from other monitoring points. In contrast, signatures of Dietz are used only at the individual monitoring points. Hence, the claimed invention is fundamentally different than the combination proposed by Examiner. Thus, Applicant submits that claims 3, 4, 20, and 21 are also patentably distinguishable over the cited reference. Applicant respectfully requests reconsideration and withdrawal of the rejection to claims 3, 4, 20, and 21, as well as allowance of these claims

Further, with respect to claims 5 and 22, Examiner's proposed combination is unsupportable. Specifically, The examiner's statement that it's obvious that "data reports coming from different devices will have different signatures" is simply incorrect. The claimed invention allows for data reports that may have the same signatures when the different devices are monitoring exactly the same data packets.

In addition, the type of signature or identification disclosed by Dietz cannot be used to determine if two packets are duplicates or not, precisely because that signature is designed to be the same for successive, non-duplicate, packets belonging to the same flow. Therefore, it cannot be obvious to perform duplicate elimination in Dietz given its disclosure because its

system fails to support duplicate elimination as claimed. This reasoning also extends to the duplicate-elimination features of Applicant's claims 15, 32, and 33.

Thus, Applicant submits that claims 5 and 22, as well as claims 15, 32, 33, are also patentably distinguishable over the cited reference. Applicant respectfully requests reconsideration and withdrawal of the rejection to claims 5 and 22, as well as claims 15, 32, 33, and request allowance of these claims.

Conclusion

In sum, Applicant respectfully submits that claims 1 through 33, as presented herein, are patentably distinguishable over the cited references (including references cited, but not applied). Therefore, Applicant requests reconsideration of the basis for the rejections to these claims and request allowance of them.

In addition, Applicant respectfully invites Examiner to contact Applicant's representative at the number provided below if Examiner believes it will help expedite furtherance of this application.

Respectfully Submitted,
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By: _____



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